

PROPOSED CHANGES TO THE MISCONDUCT RULES

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(g) **Abuse of the Complaint Procedure.** A complainant who has filed vexatious, repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints as set forth below.

- (1) **Multiple complaints by single complainant.** After affording the offending complainant an opportunity to show cause in writing why his or her ability to file further complaints should not be limited, the judicial council may restrict or impose conditions upon the complainant's use of the complaint procedure. Such restrictions or conditions will be narrowly tailored to address the specific problem encountered. ~~Upon written request of the complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.~~ (MOVED BELOW; SEE LAST SENTENCE OF THIS RULE.)
- (2) **Identical or substantially identical complaints submitted en masse by multiple complainants.** The Chief Judge may order the Clerk of Court not to formally process any additional complaints identical or substantially identical to a complaint that has already been dismissed or concluded, but instead to provide complainants a copy of the original Memorandum and Order disposing of the matter. No further action shall be taken with respect to any such identical or substantially identical complaints.

Upon written request of the complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.

COMMENTARY ON RULE 1

Identical Complaints

Rule 1(g) addresses abuses of the complaint system. Rule 1(g)(2) provides a remedy for the abuse of the complaint system created when individuals duplicate a complaint en masse. Section 372(c) is a remedial statute that is intended to correct conduct or conditions that interfere with the proper administration of justice in the courts. See Rule 1(a). No purpose is served under § 372(c) by opening additional separate complaint files and following the process set forth in the statute and the misconduct rules for identical complaints. In fact, following the prescribed procedures would have a serious negative impact on the administration of justice because of the cost in judicial time and resources and would therefore be in direct conflict with the purpose of the statute.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints in the Ninth Circuit, which is reproduced in the appendix to these rules. Copies of the rules and the form Forms may be obtained by: (1) writing or telephoning to: the clerk Clerk of the Court of Appeals for the Ninth Circuit, P. O. Box 193939, San Francisco, CA 94119-3939; (2) telephoning the clerk's office at (415) 556-9800; (3) visiting Forms may be picked up in person at the Office of the Clerk of the Court of Appeals at 95 Seventh Street, San Francisco, California, or any district court or bankruptcy court within the circuit; or (4) accessing the internet at www.ce9.uscourts.gov.

RULE 4. REVIEW BY THE CHIEF JUDGE

(b) Inquiry by chief judge. In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response will not be made available to the complainant unless authorized by the responding judge. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(b) Form. A petition should be in the form of a letter, addressed to the clerk of the court of appeals, beginning, "I hereby petition the judicial council for review of the chief judge's order" There is no need to enclose a copy of the original complaint.

(d) Number of copies. Only an original is required. The complainant must file an original and twelve copies of the petition for review, along with eight copies of the original complaint.

(e) Statement of grounds for petition. The letter should set forth a brief statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition. New allegations or evidence not included within the complaint for which review is sought will not be considered by the judicial council. If the complainant wishes to lodge new allegations or present new evidence, a new complaint must be filed.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

(d) Rights of judge complained about.

- (3)** If the judicial council votes to place a petition for review on its agenda, the judge complained about will be notified of that action.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General rule. ~~A docket-sheet record of orders of the chief judge and the judicial council and the~~ The texts of any memoranda supporting such orders of the chief judge and the judicial council and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(b) Manner of making public. The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the Office of the Clerk of the Court of Appeals at 95 Seventh Street, San Francisco, CA 94103. The clerk will send copies of the publicly available materials to the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20544 20002, where such materials will also be available for public inspection. In cases which appear to have precedential value, the chief judge may cause the order and memorandum to be published.

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by Rule 2 will be available without charge in the Office of the Clerk of the Court of Appeals, P.O. Box 193939, San Francisco, CA 94119-3939 and in each office of the clerk of a district court or bankruptcy court within this circuit. They are also available on the internet at www.ce9.uscourts.gov.